IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.MC.No. 269 of 2007()

AGAINST THE ORDER DATED 16 /8 /2006 IN CC 905/2003 IN CC.1254/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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PETITIONER: ACCUSED NO.3

LOUIS, S/O.THADAKKOTTAKARA ANTONY,
EDAKALATHUR VILLAGE, DESOM.

BY ADV. SRI.T.M.CHANDRAN
SRI.V.A.SASIDHARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (CRIME NO.163/03 OF PERAMANGALAM POLICE STATION).

BY PUBLIC PROSECUTOR ADV. SRI. S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.269 of 2007

Dated this the 5th day of February, 2007

ORDER

The petitioner is accused No.3 in Crime No.163 of 2003 of Peramangalam Police Station. He along with co-accused face allegations, inter alia, under Section 325 read with 34 I.P.C. All the other accused faced trial. They have already been found not guilty and acquitted by judgment dated 16.08.2006, a copy of which is produced as Annexure-I. The petitioner was not available for trial. The case against him has hence been split up and the same is now pending as C.C.No.1254 of 2006. The petitioner has entered appearance already, it is submitted at the Bar.

2. The petitioner prays that powers under Section 482 Cr.P.C may be invoked and the proceedings against him may be quashed. This is the short prayer. What is the reason ? The learned counsel for the petitioner submits that in the trial against the co-accused, the witnesses have tendered evidence only against the 1st accused and there was no evidence whatsoever against the other accused including the petitioner herein. Therefore any continuation of the trial against the petitioner alone will be needless waste of time and resources of the State and the Court. Hence it is prayed that the proceedings against the petitioner may be quashed.

3. That some of the witnesses have turned hostile in the trial against the co-accused, is no reason for the absconding co-accused to claim any benefit or advantage. This position has been made clear by the Full Bench in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552]. In the trial against the other co-accused, the witnesses did not obviously have the opportunity nor were they expected to tender evidence against the absconding petitioner. The fact that there was no evidence against the co-accused who faced trial or against the absconding petitioner in that prosecution is certainly not a good reason to invoke the powers under Section 482 Cr.P.C. The said prayer cannot in these circumstances be accepted.

4. The learned counsel for the petitioner then prays that an early disposal of the case may be directed. The alleged incident had taken place on 10.02.2003 and I have no hesitation to agree that such a case must be disposed of expeditiously. The petitioner has now appeared before the learned Magistrate, it is submitted. He must first move the learned Magistrate for early disposal. He has admittedly not done the same.

5. This Crl.M.C is, in these circumstances, dismissed. But I may hasten to observe that it shall be open to the petitioner to seek expeditious disposal of the case against him. The learned Magistrate must consider that request and pass appropriate orders. I further

clarify that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise all relevant and appropriate contentions before the learned Magistrate.

6. Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-